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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 594 OF 2006

Shri Balwant Purshottam Patwardhan ... Appellant

V/s

Sou. Ranjana Anant Kadam & ors. ... Respondents

ALONGWITH

SECOND APPEAL NO. 595 of 2006

Trimurti Constructions & ors. ... Appellants

V/s

Sou. Ranjana Anant Kadam & ors. ... Respondents

Mr. M.R. Bhope for the appellant in S.A. No. 594 of 2006.

Mr. V.P. Patil for the appellants in S.A. No. 595 of 2006.

Mr. R.G. Ketkar for the respondent No.1 in both appeals.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 20TH JULY, 2007.

P.C.:

1. These appeals arise from a suit filed by the respondent for injunction against the appellants in both the appeals.

2. The appellant in Second Appeal No. 594 of 2006 is the owner of the suit land. The appellant in Second Appeal No. 595 is the developer of the suit land. The controversy has arisen because the appellants in both the appeals have sought to construct a structure on the terrace which, according to the first respondent/ plaintiff is a common terrace. The respondent/plaintiff had earlier filed a suit for specific performance being Suit No. 91 of 1986. This suit was decreed and it was held that the terrace adjacent to the premises occupied by the plaintiff was a common terrace and an injunction was issued in that suit restraining the appellants herein from constructing any structure on the terrace. Despite this injunction the appellants went ahead and constructed a structure on the terrace and, therefore, the plaintiff filed the present suit being R.C.S. No. 859 of 1991. The suit was decreed and the appellants were restrained from carrying out any construction on the common terrace. The appellants were also directed to demolish the room that they had built on the common terrace. The Trial Court held that since it was a common terrace and the agreement of sale indicated that it was a common amenity which the respondent/plaintiff was entitled to use at all times.

3. The Trial Court has considered various clauses of the agreement and has concluded that the appellants had no right to construct the room on the common terrace. The Trial Court has considered Section 7 and Section 7-A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 and has concluded as aforesaid. The appellate Court has concurred with the findings of fact arrived at by the Trial Court.

4. It is submitted on behalf of the appellants that in view of the judgment of the Supreme Court in the case of **M/s. Jayantilal Investments v/s Madhuvihar co-op. Housing Society & ors., reported in 2007 ALL SCR 857,** the impugned orders must be set aside. It is submitted that when the construction has been effected after taking permission from the relevant authorities i.e. the Pune Municipal Corporation and other authorities, there could be no impediment in the way of the appellants from constructing the room on the terrace.

5. This submission cannot be accepted in view of the clauses of the agreement of sale. Besides this, in a suit for specific performance, the Courts below have held that the terrace was a common terrace to be used by the respondent/plaintiff as well.

6. No substantial question of law arises in these appeals. Hence, both appeals rejected.

7. The decree of demolition of the suit structure on the terrace is stayed for a period of eight weeks from today.

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